

REMARKS

The present Amendment is in response to the Office Action mailed December 12, 2007. A petition for a three-month extension of the term for responding to said Office Action, to and including June 12, 2008, is transmitted herewith.

Claims 13-16, 18, 20, 21, and 23-35 were rejected in the Action. Independent claims 13, 16, and 21 as well as dependent claims 29, 32, and 35 have been amended herein. No claims have been canceled or added. Therefore, claims 13-16, 18, 20, 21 and 23-35 remain pending in the present application. The following sets forth Applicants' remarks relating to the currently pending claims in the outstanding Action.

Applicants have amended claim 13 in the manner suggested by the Examiner in the Action. Applicants submit that the objection to claim 13 is overcome.

The Examiner rejected claims 29, 32, and 35 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner asserted that the limitation of "said spring has holes at opposite ends" in claims 29, 32, and 35 will be broadly interpreted. Applicants have amended dependent claims 29, 32 and 35 reciting the spring or socket has "a first hole at the first end thereof and a second hole at a second end thereof" in order to more clearly define the location of the holes in the recited spring and socket. Applicants submit that the above noted amendment to claims 29, 32, and 35 overcomes the § 112 rejection of these claims.

Claims 13, 16, 18, 20, 21, 23, 27, 28, 30, 31, 33, and 34 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,895,428 to Berry ("Berry"). Applicants respectfully disagree with several of the characterizations the Examiner has made with respect to Berry. On page 4 of the

Action, the Examiner asserted "said socket has a top side with a curved convex surface 41 that extends from the curvate volume and confronts said inner surface of said first plate (21), and an underside with a curved concave surface (43 and/or 45) that extends from the curvate volume and is spaced from and confronts said inner surface of said second plate." Firstly, element (41) of *Berry* is not a curved convex surface. In fact, element (41) in *Berry* is shown as a straight conical surface. Secondly, if element (41) is located on the top side of the spring or socket as asserted by the Examiner, element (43) cannot be said to be located on the underside of the spring or socket as required in independent claims 13, 16, and 21 because both elements (41) and (43) of *Berry* are shown on the same side of member (35). See Fig. 2 of *Berry*. Thirdly, element (45) is referred to as an aperture in the specification of *Berry* and is not a curved concave surface as the Examiner refers to it. See Fig. 2 and col.4, l.57 of *Berry*. Fourthly, there is no teaching anywhere in the specification of *Berry* of a spring. The Examiner asserts fitting (109) is a spring in *Berry*. Element (109) is referred to as a threaded fitting in *Berry* that may be used to counteract a load placed on an implant. There is no teaching anywhere in *Berry* that fitting (109) deflects or acts in any manner like a spring. Therefore, *Berry* does not disclose or even suggest a spring as claimed in independent claims 13 and 21.

Further still, *Berry* does not disclose or suggest that the inner surfaces of the first and second plates face one another as recited in amended independent claim 13. For the foregoing reasons, *Berry* cannot be used to anticipate independent claim 13. Further to the reasons outlined above, Applicants submit that amended independent claim 16 is unanticipated by *Berry* because the cited reference neither discloses nor suggests a joint that couples said first and second plates together, said joint including a ball "having a

curved surface facing away from said first plate, said ball attached with one of said plates in a socket affixed with the other one of said plates for receiving and holding therein said ball." *Berry* does not disclose nor suggest a curved surface facing away from the first plate. Applicants submit independent claim 21 is unanticipated by *Berry* for at least the same reasons independent claim 13 is unanticipated. Once again, *Berry* does not disclose or suggest a spring as recited in the claims. For at least the foregoing reasons, *Berry* cannot be used to anticipate independent claims 13, 16 and 21 or any of the claims depending therefrom. A dependent claim is necessarily narrower than the claim from which it depends.

Claims 13, 16, 18, 20, 21, 23, 27, 29, 30, 32, 33 and 35 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,063,121 to *Xavier et al.* ("*Xavier*"). The Examiner asserted "an inner surface of one of said plate members comprises a ball-shaped structure extending therefrom and an inner surface of the other one of said plate members has a spring affixed thereto." Therefore, the Examiner asserted that the inner surface of one of said plate members is the first plate and the inner surface of the other one of said plate members is the second plate. Firstly, on page 7 of the Office Action the Examiner draws a lead line to what he refers to as a "curved convex surface." The surface that the Examiner refers to is clearly neither curved nor convex. Secondly, on page 6 of the Office Action the Examiner asserted that the spring/socket has an underside with "a curved concave surface that extends from the curvate volume and is spaced from and confronts the other one of said plates." As stated above, the "other one of said plates" is referred to as the second plate by the Examiner. In contrast, the "curved concave surface that extends from the curvate volume and is spaced from and confronts the other one of said plates" is the first plate of the present invention rather

than the second plate as asserted by the Examiner. For at least the foregoing reasons, *Xavier* cannot be used to anticipate independent claims 13, 16 and 21 or any of the claims depending therefrom.

Claims 13, 16, 18, 20, 21, 23, and 27-35 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,989,291 to *Ralph et al.* or, in the alternative, under 35 U.S.C. 103(a) as being obvious over *Ralph* in view of U.S. Patent No. 6,156,067 to *Bryan et al.* ("*Bryan*"). Applicants note that independent claims 13 and 21 have been amended to recite that the second plate has a "spring affixed thereto at one or more locations such that at said one or more locations there is no movement of said spring relative to said second plate in any direction." Neither *Ralph* nor *Bryan* disclose or even suggest this limitation.

In order to support a *prima facie* case of obviousness the references must teach each and every limitation in the claims. Further, in seeking to improve upon *Ralph* one skilled in the art would not look to secure the ends of what the Examiner refers to as a spring in *Ralph* in the claimed manner using the fastener means as taught in *Bryan* because the plate of *Ralph* is structured to move with respect to what the Examiner refers to as a spring in *Ralph*. Resilient wall 120 of *Ralph* comprises a porous fabric or a semi-impermeable elastomeric material. The wall 120 is further designed to couple the flanges 108a, 108b of the corresponding plates 100a, 100b. See col.6, 11.16-20 of *Ralph*. The resiliency of wall 120 allows plate 100a to move with respect to washer 230 in *Ralph*. For at least the foregoing reasons, *Ralph* cannot be used to anticipate and the combination of *Ralph* and *Berry* cannot be used to obviate independent claims 13, 16 and 21 or any of the claims depending therefrom.

Further, claims 14, 15, and 24-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Xavier* in view of U.S. Patent No. 3,867,728 to *Stubstad et al.* ("*Stubstad*"), and claims 14, 15, and 24-26 were also rejected under 35 U.S.C. 103(a) as being unpatentable over *Ralph* in view of *Stubstad*. Basically, the Examiner is using *Stubstad* in order to provide support for a deflectable convex mesh. There is no disclosure anywhere in the specification of *Stubstad* that what the Examiner refers to as a mesh in *Stubstad* is convex. The specification that the Examiner points out, for example col.13, ll.24-26 of *Stubstad*, generally relates to the diameter of the device and not to any concavity of a deflectable/deformable material on the external surfaces of the plates as recited in the rejected claims. Therefore, claims 14, 15, and 24-26 are unobvious over *Xavier* in view of *Stubstad* and *Ralph* in view of *Stubstad*.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

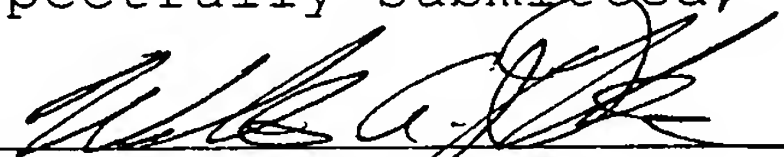
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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: June 12, 2008

Respectfully submitted,

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